Companies in private international law

Summary

The purpose of my thesis is to analyze and describe individual aspects of regulation of companies in relations with an international element. The past few decades have witnessed profound changes in the world order – continuing process of economic globalization has increased worldwide business competition. Companies, which beyond dispute are the key operators in the world markets, have to react dynamically to competitive impulses from abroad – they are engaging in cross-border trade, most business activities are carried out internationally. Globalization is also changing the contours of law and gives rise to the need for an increasingly integrated and evolving legal system. A crucial role of company law is to facilitate corporate mobility and reflect the issue of providing a more attractive system of rules and norms.

In my thesis, I discussed the theme of "Companies in private international law" and the existing possibilities for companies to move freely throughout the world, particularly in Europe, which is considered one of the main issues of contemporary company law.

The thesis is composed of four chapters. Chapter 1 is introductory and it explains general terms used in this thesis: the term "company" and its definition in Private International Law and brief characterization of the notion of "The European Private International Law".

Chapter 2 focuses on the determination of personal statute of a company (*lex societatis*). Legal scholars distinguish two fundamental opposite theories: the "incorporation" theory and the "real seat" theory. The first theory connects a company to the jurisdiction in which it is incorporated, so that the founders of a company are free to choose the law that governs company law relationships. On the contrary, according to the "real seat" theory, the law of the country where the company has its "real" seat (i.e. management and control centre) should be applied to the company relationships. Between these two fundamental principles, there is a number of other principles, such as the "control"

principle, and modifications which try to combine elements of both fundamental theories: e.g. differentiation theory, super-addition theory etc.

Chapter 3 examines relevant Czech legislation. The chapter consists of three parts. Parts 1 and 2 point out main provisions that are concerned with determination of the *lex societatis* and its scope of application. General conflict rule in the present Czech law is included in Sect. 22 of the Commercial Code, which reflect the incorporation principle. Part 3 deals with the question of possible transfer or relocation of the company's seat from one state to another.

Chapter 4 is dedicated to EU company law and is subdivided into two main parts. Part 1 concentrates on the definition of freedom of establishment of companies in primary EU law. The freedom of establishment is a central pillar of the European Union, and is guaranteed as a fundamental right by The Treaty on the Functioning of the European Union (formerly EC Treaty) – in Articles 49 and 54 TFEU (ex Articles 43 and 48 ECT). Part 2 provides an outline of relevant case law of the Court of Justice in the field of company law. The landmark judgments of ECJ (currently CJEU) in the *Daily Mail, Centros, Überseering, Inspire Art, Sevic* and *Cartesio* cases have had a great impact on companies' mobility and freedom of establishment. The importance of the case law of the ECJ for freedom of establishment is undeniable. After ECJ delivered its opinion in case "trilogy" *Centros, Überseering* and *Inspire Art*, all Member states have accepted that a company validly incorporated under the legislation of a Member State may move freely within the EU without losing its identity. However, the question of "moving out" of the country of the incorporation has still remained unsolved. In response to this question, in recent *Cartesio* case, the ECJ decided that a Member State can prevent a company incorporated under its national law from transferring its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation – thus, the Court did not overrule its *Daily Mail* decision. Slightly surprising was the *obiter dictum* statement that freedom of establishment also covers the possibility of a company converting itself into a company governed by the law of another Member State – this is *de facto* the transfer of the registered office.

Conclusions are drawn in the final chapter. In my point of view and according to the facts stated in the thesis, discussion on corporate mobility is not completed – there is still a lot of work to be done. The main aim of my thesis is to emphasize the core starting points of the possibility to transfer the seat across borders and interpretation of Articles 49 and 54 TFEU (ex Articles 43 and 48 ECT). I suggest that the EU should create the possibility of relocation via a directive (the so-called 14th directive) which has been abandoned for now.